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Kerry A. Brennan (KB-2400)

Attorneys for Plaintiff
VENTURA FOODS, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VENTURA FOODS, LLC,

Plaintiff,

v.

SUPREME OIL COMPANY,
INCORPORATED a.k.a. ADMIRATION
FOODS,

Defendant.

07 CV 7338

DECLARATION OF TERRY SPLANE

I, TERRY SPLANE, declare under penalty of perjury:

1. I am the Vice President of Marketing of Ventura Foods, LLC ("Ventura"). The statements made herein are based on my personal knowledge, company records, or as otherwise indicated. This declaration is submitted in further support of Ventura's application for a preliminary injunction.
2. Ventura first learned of a product called "Mega Fry" in February 2007.
3. On February 23, 2007, I received an email from a Ventura regional manager (attached hereto as Exhibit 1).

4. The email indicated that one of Ventura's distributors, Maximum Quality Foods ("Maximum"), had informed us that Supreme was selling a new oil that was listed as "New Mel-Fry (Mega Fry)" on a Wonder Foods invoice (attached to the email) with "the exact same look as Mel-Fry including the yellow container." At this time, Ventura did not have access to a MEGA-FRY container.
5. Ventura promptly investigated Supreme's MEGA-FRY product. The investigation was turned over to Ventura's inside counsel and outside intellectual property counsel.
6. Because the first Wonder Foods invoice Ventura received was blurry, Ventura requested and subsequently received a copy of another invoice from Maximum (a copy of that invoice is attached hereto as Exhibit 2). A redacted version of that invoice was ultimately attached to Ventura's cease-and-desist letter to Supreme.
7. The purchaser of the MEGA-FRY product on the invoice is a restaurant in New York, typical of the customers of Ventura's MEL-FRY® product.
8. In order to evaluate whether the trade name and trade dress of Supreme's MEGA-FRY product infringed Ventura's MEL-FRY® product, Ventura needed to obtain a product sample. However, because such products are sold only to distributors, Ventura was unable to purchase it through a retailer.
9. Therefore, Ventura sought to purchase a MEGA-FRY product sample.
10. Ventura received a product sample of the MEGA-FRY product in late April; it was then able to evaluate its trademark and trade dress claims against Supreme.

11. Ventura's investigation culminated in a May 22, 2007 cease-and-desist letter to Supreme (attached as Exhibit I in my prior declaration dated 8/16/07).
12. After Ventura sent its cease-and-desist letter, Ventura and Supreme spent nearly the next three months attempting to settle this matter.
13. When such discussions did not result in settlement, Ventura filed the instant action on August 16, 2007 and applied for a preliminary injunction the following day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 9, 2007



Terry Splane

Splane Declaration Exhibit 1 – 2/23/07 Email from E. Leising to M. Castagna et al. re MEGA-FRY from Supreme and attached 2/9/07 Wonder Foods Invoice (copy marked as Exhibit 12 at the 9/25/07 Deposition of Michael Leffler)

Splane Declaration Exhibit 2 – 9/5/06 Wonder Foods Invoice

EXHIBIT 1

From: LEISING, EARL

Sent: Friday, February 23, 2007 9:22 AM

To: CASTAGNA, MIKE; ADRIAN, HOLLY; SANNA, CHRIS; STOLLE, JIM; GESKE, STEVE; SPLANE, TERRY

Subject: Mega Fry from Supreme

I'm not sure how well you can see this but on this invoice from Wonder Foods they are selling a new oil from Supreme as "New MelFry (Mega Fry)". It is packed 3/10 quart and they are selling it for \$32.95. Which means Supreme is selling it to Wonder for probably less than \$30. According to Gary at Maximum it is 100% Soybean. He said Supreme contacted him to bring it in as well but he is loyal to Mel-Fry. He said it is the exact same look as Mel-Fry including the yellow container.

<<Wonder Invoice.jpg>>

Earl Leising

Region Manager - Ventura Foods

139 The Paddock

Williamsville, NY 14221

(716) 626-9553

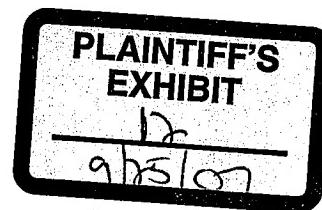


EXHIBIT 2



WONDER FOODS

57-10 Flushing Avenue
Maspeth, NY 11378
Email: WfBklyn@aol.com

Local Phone: (718) 387-2022 Tel: (718) 387-2081
Toll Free: (877) 418-0666 Fax: (718) 387-2596

*** INVOICE ***

| |
|--------------|
| INVOICE NO |
| 700134 |
| INVOICE DATE |
| 09/05/06 |

KENNEDY FR CK (2273) **
2273 CROTONA AVE

BRONX NY 11111

KENNEDY FR CK (2273) **
2273 CROTONA AVE

S H I P
T O
P R O
B R O N X N Y 1 1 1 1 1
7 1 8 - 3 6 5 - 6 0 9 4

| ITEM | ORDER NO | ORDER DATE | SHIP VIA | TERMS | ROUTE NO | PAGE | | |
|---------|----------|------------|---|----------------------------|-----------|------------|--------|--------|
| 01 | 701388 | 09/05/06 | WONDER | *C/COD* CASH ONLY | 01 SONU | | | |
| | | | | | | | | |
| | ITEM | BRAND | PRODUCT DESCRIPTION | PACK SIZE | PRICE | NET WEIGHT | | |
| | 1 | CBCS | LAMB WEST | APPLE TURNOVERS, IND. | 1/120CT | 26.95 | 10.00 | 26.95 |
| | 1 | CBCS | | TWINE (FOR PIZZA) | 1/EA | 8.95 | .00 | 8.95 |
| | 1 | CBCS | | PIZZA BOXES 18 | 1/50CNT | 17.95 | .00 | 17.95 |
| | 1 | POLIS | MILLFLOW | GARLIC POWDER (Relish) | 124180Z | 12.95 | 1.13 | 14.57 |
| 3 | 3 | CBCS | HEINZ | P/C KETCHUP (HEINZ) | 1/1000CT | 19.50 | 67.50 | 58.50 |
| 1 | 1 | CBCS | SCOTT | LO-MAST NAPKINS | 1/100000 | 22.95 | .00 | 22.95 |
| 2 | 2 | CBCS | TOWER | BEER PATTIES MILD | 1/50CNT | 33.95 | .00 | 67.90 |
| | 1 | CBCS | WONDER'S | BWD MOZZARELLA STICKS | 6/2LBGS. | 27.95 | 12.00 | 27.95 |
| | 1 | CBCS | PIERCE | POPCORN DK MBH10 | 1/10LBGS | 22.95 | 10.00 | 22.95 |
| | 1 | CBCS | CHIK | CHICKEN NUGGET | 1/10 LBGS | 16.95 | 10.00 | 16.95 |
| | 1 | CBCS | OASIS | P/C TARTAR SAUCE | 1/200CT | 5.95 | .00 | 5.95 |
| | 1 | CBCS | PROMISE | P/C MARGARINE CUPS | 600/5 GM | 15.95 | 18.00 | 15.95 |
| | 1 | CBCS | | YEAST DRY | 1/.5 KB | 6.95 | .00 | 6.95 |
| | 1 | CBCS | KRONOS | BF BYROS STRIPS UC Short | 128/1.25 | 22.95 | 11.50 | 22.95 |
| | 1 | CBCS | | APRON | 1/100CNT | 7.95 | .00 | 7.95 |
| | 1 | CBCS | OASIS | P/C BBQ SAUCE 16OZ | 1/200CT | 5.95 | 4.50 | 5.95 |
| 2 | 2 | CBCS | PIERCE | WING ZING-2SLBS | 1/25LBS | 62.95 | 50.00 | 125.90 |
| 1 | 1 | CBCS | MOORE | ONION RINGS | 8/2LBBAG | 15.95 | 16.00 | 15.95 |
| 3 | 3 | CBCS | GENRLMILLS | ALL TRUMPS FLOUR | 1/50LBS. | 13.50 | 150.00 | 40.50 |
| 6 | 6 | CBCS | BONANZA | FRENCH FRIES BONANZA | 6/6 | 15.95 | .00 | 95.70 |
| 2 | 2 | CBCS | | NEWELFRY (MEGA FRY) Relish | 3/10QT | 32.95 | .00 | 65.90 |
| 1 | 1 | CBCS | | STRAWS | 24/500 | 33.95 | .00 | 33.95 |
| | | | | Short | | | | |
| S: 1 03 | | | TOTAL PIECES: 1 | | | | | |
| | | | TOTAL OUTSTANDING 7,160.25 | | | | | |
| | | | NEW ADDRESS IS 57-10 FLUSHING AVE., MASPETH, NY 11378 !!!! **** | | | | | |
| PKR | DRV | TRK | STOP | | | | | |
| 01 | 01 | 01 | 010 | | | | | |

\$591.50

Bacon

Bacon

Bacon

Total → \$ 591.50

Total

Total

| | |
|------------|--------|
| SUB TOTAL | 729.22 |
| TAX | .00 |
| AMOUNT DUE | |
| NET TOTAL | |

CUSTOMER COPY

THIS AMOUNT : 729.22